

East Dorset Magistrates Court

R v Spencer Flower

1. In this case the defendant has pleaded not guilty to one requisition under Sections 31 (1) and (4) and 34 (1) (b) and (3) of the Localism Act 2011 hereafter referred to as "The Act"

The requisition reads:

On the 25th February 2013 at Dorset, (Spencer Flower) was present at a meeting about the East Dorset Core Strategy and had a disclosable pecuniary interest in a matter considered at that meeting and without reasonable excuse, participated in the vote taken at that meeting.

The Provisions within The Act are found at Chapter 7 sections 30-34.

30 Disclosure of pecuniary interests on taking office

(1) A member or co-opted member of a relevant authority must, before the end of 28 days beginning with the day on which the person becomes a member or co-opted member of the authority, notify the authority's monitoring officer of any disclosable pecuniary interests which the person has at the time when the notification is given.

(2) Where a person becomes a member or co-opted member of a relevant authority as a result of re-election or re-appointment, subsection (1) applies only as regards disclosable pecuniary interests not entered in the authority's register when the notification is given.

(3) For the purposes of this Chapter, a pecuniary interest is a "disclosable pecuniary interest" in relation to a person ("M") if it is of a description specified in regulations made by the Secretary of State and either—

(a) it is an interest of M's, or

(b) it is an interest of—

(i) M's spouse or civil partner,

(ii) a person with whom M is living as husband and wife, or

(iii) a person with whom M is living as if they were civil partners,

and M is aware that that other person has the interest.

(4) Where a member or co-opted member of a relevant authority gives a notification for the purposes of subsection (1), the authority's

31 Pecuniary interests in matters considered at meetings or by a single member

(1) Subsections (2) to (4) apply if a member or co-opted member of a relevant authority—

- (a) is present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority,
- (b) has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, and
- (c) is aware that the condition in paragraph (b) is met.
- (2) If the interest is not entered in the authority's register, the member or co-opted member must disclose the interest to the meeting, but this is subject to section 32(3).
- (3) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member or co-opted member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date of the disclosure.
- (4) The member or co-opted member may not—
- (a) participate, or participate further, in any discussion of the matter at the meeting, or
- (b) participate in any vote, or further vote, taken on the matter at the meeting,
- but this is subject to section 33.
- (5) In the case of a relevant authority to which Part 1A of the Local Government Act 2000 applies and which is operating executive arrangements, the reference in subsection (1)(a) to a committee of the authority includes a reference to the authority's executive and a reference to a committee of the executive.
- (6) Subsections (7) and (8) apply if—
- (a) a function of a relevant authority may be discharged by a member of the authority acting alone,
- (b) the member has a disclosable pecuniary interest in any matter to be dealt with, or being dealt with, by the member in the course of discharging that function, and
- (c) the member is aware that the condition in paragraph (b) is met.
- (7) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date when the member becomes aware that the condition in subsection (6)(b) is met in relation to the matter.
- (8) The member must not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by the member).
- (9) Where a member or co-opted member of a relevant authority gives a notification for the purposes of subsection (2) or (7), the authority's monitoring officer is to cause the interest notified to be entered in the authority's register (whether or not it is a disclosable pecuniary interest).
- (10) Standing orders of a relevant authority may provide for the exclusion of a member or co-opted member of the authority from a meeting while any discussion or vote takes place in which, as a result of the operation of subsection (4), the member or co-opted member may not participate.
- (11) For the purpose of this section, an interest is "subject to a pending notification" if—
- (a) under this section or section 30, the interest has been notified to a relevant authority's monitoring officer, but
- (b) has not been entered in the authority's register in consequence of that notification.

33 Dispensations from section 31(4)

- (1) A relevant authority may, on a written request made to the proper officer of the authority by a member or co-opted member of the authority, grant a dispensation relieving the member or co-opted member from either or both of the restrictions in section 31(4) in cases described in the dispensation.
- (2) A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority—

(a) considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

(b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

(c) considers that granting the dispensation is in the interests of persons living in the authority's area,

(d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or

(e) considers that it is otherwise appropriate to grant a dispensation.

(3) A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.

(4) Section

34 Offences

(1) A person commits an offence if, without reasonable excuse, the person—

(a) fails to comply with an obligation imposed on the person by section 30(1) or 31(2), (3) or (7),

(b) participates in any discussion or vote in contravention of section 31(4), or

(c) takes any steps in contravention of section 31(8).

(2) A person commits an offence if under section 30(1) or 31(2), (3) or (7) the person provides information that is false or misleading and the person—

(a) knows that the information is false or misleading, or

(b) is reckless as to whether the information is true and not misleading.

(3) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A court dealing with a person for an offence under this section may (in addition to any other power exercisable in the person's case) by order disqualify the person, for a period not exceeding five years, for being or becoming (by election or otherwise) a member or co-opted member of the relevant authority in question or any other relevant authority.

(5) A prosecution for an offence under this section is not to be instituted except by or on behalf of the Director of Public Prosecutions.

(6) Proceedings for an offence under this section may be brought within a period of 12 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.

(7) But no such proceedings may be brought more than three years—

(a) after the commission of the offence, or

(b) in the case of a continuous contravention, after the last date on which the offence was committed.

(8) A certificate signed by the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

2. The court has not been addressed as to "reasonable excuse" but has considered *JB v Director of Public Prosecutions [2012] EWHC 72*

(Admin) a case dealing with a breach of an Anti Social Behaviour Order in the course of that judgment the court looked at "reasonable excuse" as it is applied across legislation:

14. The defence of "reasonable excuse" is found in a large number of statutory provisions. We were helpfully provided by Miss Whitehouse and Mr Jonas, at our request, with other instances of the defence arising and the view expressed by the Courts upon the ambit of the defence. These included, in addition to statutes specifically referred to below, s.7(6) of the Road Traffic Act 1988 (*R v Lennard* (1973) 57 Cr App R 542), s.9(1) of the Prevention of Terrorism Act 2005, s.113 of the Sexual Offences Act 2003 (*McMillan v HM Advocate* [2010] HCJAC 103), s.5(5) of the Protection from Harassment Act 1997 (*R v Evans* [2005] 1 Cr App R 546), s.42A(1) of the Domestic Violence, Crime and Victims Act 2004, s.80(4), (6) of the Environmental Protection Act 1990 (*Polychronakis v Richards & Jerrom Ltd* [1997] EWHC Admin 885), s.6(1) of the Bail Act 1976, s.14J of the Football Spectators Act 1989, and s.139(1)-(3) of the Criminal Justice Act 1988 (*R v Jolie* [2004] 1 Cr App R 3).

15. It is clear from the decision of the Supreme Court in *R v G* [2009] UKHL 13, [2009] 1 AC 43 (in the context of s.58(3) the Terrorism Act 2000) and the Court of Appeal Criminal Division in *R v AY* [2010] 2 Cr App R 15 (in the same context) that what constitutes a reasonable excuse is essentially a question which is dependent on the circumstances of each case in the context of the offence to which it relates – see in particular the judgment of Lord Rodger at paragraph 81 in *G* and paragraph 25 of the judgment of Hughes LJ in *AY*. As Miss Whitehouse submitted, it may not be helpful to draw analogies with cases where it has been decided a reasonable excuse arose: see the observation of Elias LJ in *R v Unah* [2011] 2 Cr App R 32 at paragraph 8 (in the context of s.25(5) of the Identity Cards Act 2006).

16. We were referred by Mr Jonas to *R v Cugullere* (1961) 45 Cr App R 108 where the Court of Criminal Appeal held that the offence under s.1(1) of the Prevention of Crimes Act 1953 of having an offensive weapon in a public place without lawful authority should be read as requiring the Crown to prove that the defendant knowingly had the weapon with him. However, this is of no assistance, as the court was concerned with proof of knowledge for the purpose of proving possession: see *Nicholson* at paragraphs 11 and 12. The same observation applies to *R v McNamara* (1988) 87 Cr App 246, possession of dangerous drugs and to the requirement under s.58 of the Terrorism Act where the Crown has to prove that the defendant is aware of the nature of the information contained in the relevant document (see paragraphs 46-7 of *G*).

17. In my judgment section 1(10) does not require the Crown to prove a specific mental element on the part of a defendant at the time he committed the acts which constitute the breach of an ASBO. However, if the issue of reasonable excuse arises in any given case a defendant can raise his state of mind at the time of the alleged breach since the state of mind will usually be relevant to the issue of reasonable excuse. As the effect of s.1(10) is to criminalise conduct that would otherwise not be criminal (of paragraphs 10 and 11 of the judgment in *Charles*), it would not be right, on principle, to exclude matters that go to a defendant's state of mind (such as forgetfulness or a misapprehension about the meaning of the order or an accidental breach). In any event, the decision in *Nicholson* makes clear that the defendant's state of mind may, if the circumstances warrant, be taken into account.

3. In this case the prosecution and defence had agreed a bundle of evidence and a bundle of agreed witness statements, in addition the court heard from acting Detective Inspector Boyle for the prosecution and from the Defendant with a number of written character references for the defendant.

4. There are a number of matters that are not in dispute. As of the 25th February 2013 the Defendant held positions of elected office as a Councillor at East Dorset District Council ("EDDC") and Dorset County Council. The Defendant was a Non- Executive Director of Synergy Housing Limited ("SHL") from the date of his appointment in 2004 until the 24th September 2013, he was not paid a salary but received remuneration payments from SHL, a total of £29,920 for the years 2010 to 2013. He ceased from this role at SHL at that time as he had (under the SHL rules) served the maximum permitted three terms of three years. SHL is a charity that exists to provide homes for those in need. No dividends are paid to shareholders, SHL as a charity cannot make a profit.

5. On the 15th May 2011 the Defendant as a member of EDDC completed a " General Notice of Registerable Interests" form which was countersigned by Keith Mallett on the 19th May 2011. Keith Mallett was at that time the Monitoring Officer and the Head of Legal Services covering EDDC and Christchurch Borough Council.

6. Sections 31 and 34 of The Act came into force on the 7th July 2012.

7. On the 19th June 2012 the Defendant attended a training session in respect of elected members' individual responsibilities and the requirement to register pecuniary interests. On the 7th July 2012, the Defendant completed a "Registration of Pecuniary Interests" form that was submitted to EDDC. That document set out what was considered to be disclosable pecuniary interest, the Defendant listed interests in Dorset County Council- elected office, Dorset Fire Authority and SHL. On the 7th July the Defendant completed a similar form for Dorset County Council.

8. In his role as a Non Executive Director of SHL the Defendant attended a meeting of SHL New Homes Committee held on the 7th June 2011. The

minutes contain reference to negotiations between SHL and the Homes and Communities Agency and reference to properties owned by SHL in Cuthbury Close in Wimborne . The site has now been adopted for development under the Core Strategy process.

9.The Crown rely upon the assertion that, SHL having acquired the Cuthbury Allotments site in Wimborne, SHL entered into an agreement with a local building firm Wyatt Homes Ltd, to enable Wyatt Homes to purchase the site in the event that it became land allocated for housing under the Core strategy. That type of agreement would be proper and lawful and both SHL and Wyatt would be entitled to enter such a proposal. There is mention of this proposal in Keith Mallett's statement. However, the court has not been shown this document and more importantly does not know the date of this agreement or the precise terms. It is asserted by the Crown that the terms of the legal rights set up between SHL and Wyatt allowed for existing flats owned by SHL situated in Cuthbury Close to be demolished, and so offering up better development opportunities such as better access to the Cuthbury site, in exchange for which Wyatt would provide SHL with replacement modern affordable housing units on those allotments. The Crown maintain that Wyatt Homes hold the rights over the Cuthbury allotments site, which allow them to purchase the site in the event of the site becoming developable land allocated for housing development in the emerging Core Strategy.

10.The Core Strategy as set out in Mr Mallett's statement of the 6 May 2014, "is the primary document in the Local Plan, setting out the Council's major planning strategy and policies for the period up to 2028. The Core Strategy is a joint document covering Christchurch and East Dorset. The Core Strategy has been through significant consultation stages..." In a document before the court headed Decision Making and Public Consultation Process of Christchurch and East Dorset which went through at least thirty stages from 2005 to Spring 2014 when the Local Plan was Formally Adopted.

For the purposes of this case the significant stage is the Full Council meeting on the 25 February 2013 where Item 10 of the Agenda was to consider whether the Core Strategy should be submitted to the Secretary of State. The Defendant was present at that meeting, he accepts that he spoke in support at that meeting, he answered questions from two members of the public and he voted in favour. The vote was recorded 23

in favour, 4 votes against and 6 abstentions, as set out in Mr Mallett's statement 6 May 2014.

11. At the meeting of the 25 February 2013 the Pre- Submission Consultation paper which covered the period 2 April – 25th April 2012 was available. In that document at WMC 1 were proposals:

“New neighbourhoods could be built at Cuthbury Allotments, including Cuthbury Close and Wimborne Football Club and at St Margaret's Close, to the west of Wimborne.

This would involve:

The provision of about 170 new homes.

Use of part of the Cuthbury areas for possible extension of Victoria Hospital, and/or provision of a new medical centre.

A green corridor along the River Stour.”

Paragraph 2.20 of this document under the title of Housing reads as follows:

“DCP representing Wyatt Homes Ltd- support the proposal, including the St Margaret's Close option although their client has no interest in this place of land. They argue that the Option will deliver affordable housing and will replace the unattractive existing housing part of the site, will provide replacement allotments, relocate the football club...”

Two bullet points below the following entry:

“Synergy Housing Association- See no reason to disagree with the Local Authority's assessment and findings in each case. (Comment applicable to all Wimborne housing proposals)

12. When the Defendant^{on 8/6/14 SW} attended a voluntary interview with the police he was asked about Cuthbury Close at Wimborne, he said he knew where the site was and that it was adopted as part of the Core Strategy, he went on to say it was one of the non-controversial sites. Later in the interview he is asked:

Officer 518: “Okay, The reason we're asking the questions about Cuthbury Gardens is because Synergy has an interest in-... Cuthbury Close. There's some social housing as you come across Julian's Bridge.

Defendant: It might do, I don't know. I wouldn't know. I wouldn't know all the locations of every house that Synergy has had involvement in. No way I'd know that.

Officer 650: In the Core Strategy document that was put out by East Dorset District Council were you the Leader of the Council at that time, June 12?

Defendant: Yeah.

Officer 650: Yes so that's gone out, the consultation about that particular Core Strategy site and within the documents there's reference to Synergy Housing and-

Defendant; No, I've never seen that. I wouldn't go looking for that in there to be honest. I wouldn't see it.

Later on the Defendant was asked about the meeting of the New Homes Committee in June 2011 when the Cuthbury site came up for discussion. He replied "I'm not going to remember that long ago."

Officer 518: Isn't it incumbent upon you, then, as Leader of the Council-a Council member- as any votes that take place or any meetings that take place and particularly around the point of the Core Strategy which is a very controversial document that there should be at some point a pause 'hang on', before I get involved in this, this particular vote, this particular meeting, just need to check that I'm not going to hamstring myself by doing something I shouldn't be doing?

Defendant: that could apply to any member.

Officer 650; Yes.

Defendant:- with any land interest, any interest developments at all. What we did we didn't get any blanket dispensation coz you do get blanket dispensations sometimes.

Officer 650: Yes because it's Poll tax and things like that or Community Tax.

Defendant; Things like setting the Council tax because the government didn't draft their legislation properly so it left a point where if you've got land in the area, you couldn't determine your own tax, so you get a dispensation saying that you can. But I've always believed -and I still believe- that the Core Strategy was based around that principle of the strategic use of land, did not involve any aspects around land ownership. I don't think that would've and bearing in mind of course and even if as it says there's an interest that's linked to the officers who determine that the piece of land is suitable for redevelopment, not me or any other member."

Further on in the interview:

Officer 650:" And at the time you participated in that vote, was it in your mind that you were aware that Synergy had an interest in Cuthbury?

Defendant: No, not at all because as I said, we only ever saw it as allotments. I've got, I have no recollection of that. Had I done so, obviously I would've had to get advice from my Monitoring Officer.

Officer 650; You put a form in saying you've got an interest in Synergy but what my understanding of Localism is, you wouldn't be able to participate in the vote.

Defendant: Mhm.

Officer 650: You'd have had to say "Actually because I've put a form in and Synergy have got an interest in Cuthbury."

Defendant: Well I didn't, I didn't associate the Core Strategy and that land with Synergy, It's just too far apart. It's (a) there's a period of time and there's no connection between that document and the Core Strategy paperwork.

13.As part of the agreed evidence before the court, there is a schedule headed 'EDDC Declaration of Interest Forms completed by Cllr Spencer Flower. This covers a period between 02/08/2005 to 25/06/2013 over 70 entries, three of those after the Act came into force.

14.The Defendant gave evidence. He is a man of Good Character and the court directs itself accordingly when considering his evidence. The court has had sight of a number of character references from a number of people who speak very highly of the abilities, experience and hard work that he is conscientious and has given many years of public service.

The Defendant's evidence was that he started from fairly humble beginning. He spent many years in engineering rising to Managing Director, he worked for some twenty four years in that industry. He became involved in politics at a local level starting at his Parish council. Over the course of a number of years he served on many Councils, including local County Councils and he was eventually to be voted leader of Dorset County Council. He attended a large number of meetings in the various roles that he undertook. As Non Executive Director of SHL he was aware the company had many thousands of properties with sites across Dorset and other counties, they employed many hundreds of staff. His role as a Non Executive Director was to ensure that SHL had good governance through the business. Across all his roles he had some 700-800 meetings a year. That is a considerable amount of work. In

preparation for these meeting he would receive papers and documents that he might need to consider prior to that meeting. The Court accepts by the nature of the volume of material that the Defendant had to deal with that he would not read every page line by line.

15. It was clear from the Defendant's evidence that he was aware of the Localism Act he attended the training, he disclosed his interests. He was aware of the role of Monitoring Officer, he was aware of the Dispensations from section 31 (4). He and others had course to apply for dispensations when it became clear that as the Legislation was drafted none of the Council members would be able to vote on Council Tax matters if they owned property in the area. It seems to be accepted by the Prosecution and Defence that Parliament could not have intended Council members being unable to consider Council Tax matters when the Act was brought into force.

16. The Defendant over his long time in public office was aware of the long and slow process of the Core Strategy, starting way back in 2005. As a result of the 2010 election, his evidence was that effectively the DCC and the District Councils, had to start all over again with the work on that process.

17. The Defendant approached the meeting on the 25 February 2013 with a detailed knowledge of the process of the Core Strategy, the importance of the Core Strategy moving through many stages. At the meeting of the 25 February 2013, there was to be a vote that the Core Strategy should proceed to the next stage and for the Secretary Of State to consider it and decide whether it should proceed further. It was not in the Defendant's mind that it immediately related to planning matters or to particular pieces of land.

18. In cross examination the Defendant was reluctant to admit that he read documents. He was asked, in connection with the statements and the bundle of evidence, prepared for the hearing, had he read them. He said that he had looked at them and had to be pressed many times as to whether he had actually read them. He finally admitted he had. The court came to the conclusion that the Defendant was trying to distance himself from material that was relevant to his decision making. The Defendant maintained that he was not someone that considered all the detail he looked at the bigger picture. The court noted that he had attempted to

distance himself from discussions that had taken place at SHL concerning Cuthbury Close in the interview with the police.

19. The issue for the court to determine is did he have a reasonable excuse to take part in the meeting as he had already disclosed his pecuniary interest in SHL. The Defendant took the view that the matters at the meeting concerning the Core Strategy was of a broader nature and did not concern detailed issues of planning and ownership.

20. The Court considers that the Defendant should have prior to the meeting taken time to consider his position. The Localism Act makes it clear that having declared his interest in SHL he could not take part in that meeting. He could have obtained a dispensation, he knew they existed and had as others had made use of such a dispensation in connection with Council Tax. The legislation places the onus on the member to make the necessary disclosure, which he had already done. The defendant needed to carefully consider his position, it was not unreasonable for him to consult the Monitoring Officer. The court has seen evidence that there were occasions that the Monitoring Officer would notify a number of members of potential issues arising at a meeting from the pecuniary interests the members had declared. However, it is the court's view that the onus clearly remains on the member throughout to deal with matters. The facts were that at the meeting on the 25 February 2013 the Defendant was prevented from taking part by the terms of the Act. Without obtaining a dispensation he could not take part in that meeting. The meeting was considering the Core Strategy, SHL had put in a response to consultation, SHL owned land that was being considered and was a part of the details contained in the Core Strategy, the Defendant had attended meeting of SHL where the long term use of the land at Cuthbury Close had been discussed. It is not a reasonable excuse to effectively fail to consider those matters in the defendant's knowledge. The Core Strategy document had been going through the process of consultation for some time, SHL had made representations in that document and to assert that the Core Strategy had no relevance to the pecuniary interest in matters considered at a meeting as set out in paragraph 31 of the Act is incorrect. There was a positive duty upon the Defendant under section 31 (4) not to participate and not to vote.

21. The Defendant failed to consider the effect of his notification under the disclosure of pecuniary interests, failed to consider the Core Strategy document, failed to take into account the matters under discussion at SHL.

New Homes Committee on the 8 June 2011. Whilst his participation in the meeting on the 25 February 2013 cannot on the evidence before the court lead to the conclusion of any direct benefit to him, the Localism Act makes it clear he should not take part or vote at that meeting. He has failed to satisfy the court that what he did amounted to a reasonable excuse. The court is satisfied so that it is sure that the defendant is guilty of this offence.

S Nicholls
District Judge (Magistrates Courts) Nicholls

30/3/15